



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

March 30, 2006

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

Mr. Mark Rey  
Undersecretary for Natural Resources and Environment  
United States Department of Agriculture  
1400 Independence Avenue., SW  
Washington, DC 20250

Re: Secure Rural Schools Land Sales Initiative

Dear Mr. Rey:

A century ago, the nation's Chief Forester, Gifford Pinchot, had the foresight to manage our national forests to ensure "the greatest good for the greatest number in the long run." The National Forest Land Conveyance for Rural Communities Act, in contrast, does the greatest good for the smallest number in the short run. It is no way to manage the public trust, and I am steadfastly opposed to this myopic approach to forest management and funding education. Consequently, I have instructed my staff to evaluate all legal options available to protect the Mark Twain National Forest from this short-sighted plan.

The Forest Service's plan to designate over 300,000 National Forest acres for sale is especially objectionable because it does not require the Service to take a hard look at the environmental impacts in compliance with the National Environmental Policy Act. This important law is designed to help ensure that agencies make informed decisions about public trust lands and should not be lightly set aside.

As Attorney General, one of my principal duties is to protect Missourians from consumer fraud. I frequently warn my constituents, "if something sounds too good to be true, it probably is." This admonition applies here, too, as the proposed legislation sounds too good to be true, and it is. We must preserve our natural heritage for future generations rather than squander it forever in a short-sighted "get rich quick" scheme. The current proposal unnecessarily and unwisely pits our public schools against our national forests. The Administration has a duty to propose a means to adequately fund our public schools. But the Administration also has a duty, no less important, to protect and preserve our national forests. While I support funding for rural schools, I oppose the plan to sell our forests.

Accompanying this correspondence you will find a Memorandum summarizing the many reasons for my opposition. Please include it in your administrative record.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeremiah W. Nixon", written over a circular flourish.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure

## **ATTORNEY GENERAL OF THE STATE OF MISSOURI**

TO: Attorney General Nixon

FROM: Agriculture & Environment Division

RE: Federal plan to sell 300,000 acres of national forest lands  
“National Forest Land Conveyance for Rural Communities Act”

DATE: March 30, 2006

This memorandum is in response to your request for an analysis of the U.S. Forest Service’s proposal described as the “Secure Rural Schools Land Sales Initiative.”

- Initially, the proposal imposes a clearly disproportionate burden on Missourians. Missouri stands to lose more in forest land than all but 3 of the 34 states. At the same time, the President’s budget calls for Missouri to receive only \$2,738,813 in allocations, less than 13 other states. Several states, including Montana, Texas, South Carolina, Mississippi, Louisiana, and Arkansas, are slated to receive more federal dollars while losing less in forest acreage than Missouri.
- The proposal assumes there are no other alternatives to funding schools, and unnecessarily pits our national forests against our public schools. Undersecretary Rey has publicly stated that this proposal “is the only proposal on the table” and that it “exists in a universe of one.”<sup>1</sup> Other alternatives must be explored.
- The Administration’s “National Forest Land Conveyance for Rural Communities Act” legislative proposal is an attempt to evade the National Environmental Policy Act’s requirements that an environmental impact statement or, at a minimum, an environmental assessment be performed to consider the potential effects of the government’s plan. NEPA and CEQ regulations require that an EIS be conducted anytime the federal government proposes a “major federal action significantly affecting the

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<sup>1</sup>Forest Service media briefing, Feb. 28, 2006.

quality of the human environment.”<sup>2</sup> The Administration’s proposed legislation specifically exempts the Forest Service from NEPA compliance by making these landsales a categorical exclusion from NEPA. In effect, the proposed legislation gives the Forest Service carte blanche to ignore the environmental impact of selling forest lands.

- While the Administration attempts to exempt these land sales from NEPA, the legislation does not include an exemption from the Endangered Species Act. Mark Twain National Forest provides habitat for several endangered species, including the gray bat, the Indiana bat, and the Hines Emerald Dragonfly.<sup>3</sup> In May 2004, Indiana bats were discovered near Lake Wappapello in Wayne County. They were tracked to tree roosts within 2.5 miles of their capture point. 440 acres are marked for sale within 4 miles of Lake Wappapello.<sup>4</sup> The Forest Service also reported finding a colony of Indiana bats in “Knife Cave” in the Houston/Rolla ranger district in February 2005. In the September 2005 Final Environmental impact Statement for the new Mark Twain National Forest Land and Resource Management Plan (FEIS), the Forest Service acknowledges the incredible pressure on these species “at the brink of extirpation”<sup>5</sup> and that the Forest

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<sup>2</sup>FSH 1909.15 - ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK WO AMENDMENT 1909.15-93-1 EFFECTIVE 9/3/93 65.14 - Council on Environmental Quality (CEQ) Guidance Regarding NEPA Regulations. Exhibit 1. “The National Environmental Policy Act and the CEQ regulations are concerned primarily with those "major federal actions significantly affecting the quality of the human environment" (42 U.S.C. 4332). Accordingly, agency procedures, resources, and efforts should focus on determining whether the proposed federal action is a major federal action significantly affecting the quality of the human environment. If the answer to this question is yes, an environmental impact statement must be prepared. If there is insufficient information to answer the question, an environmental assessment is needed to assist the agency in determining if the environmental impacts are significant and require an EIS. If the assessment shows that the impacts are not significant, the agency must prepare a finding of no significant impact. ”

<sup>3</sup>[http://www.fs.fed.us/r9/forests/marktwain/wildlife/t\\_e\\_species.htm](http://www.fs.fed.us/r9/forests/marktwain/wildlife/t_e_species.htm)  
Forest Service website.

<sup>4</sup>27N/5E, 28N/6E, 26N/7E, and 26N/6E according to the Forest Service’s Geocommunicator.

<sup>5</sup>FEIS 3-154.

provides a refuge.<sup>6</sup> Confident in its new management plan, the Forest Service reassured the reader of the FEIS that the species at risk would be safe for future generations to enjoy. “However, this threat is very unlikely to occur on Mark Twain NF lands, as conversion to non-forest land uses is extremely rare.”<sup>7</sup> In fact, the planners were so confident that they asserted that “[t]here would be no conversion of Mark Twain NF lands for urban development.”<sup>8</sup> Of course, many of the 29 counties that make up the Forest have little or no zoning or other local controls to prevent a “non-forest” land use. The planners who wrote the FEIS realistically noted time and again that, “[h]abitat loss of many types would continue on private ownerships, possibly at an accelerated rate in some of the twenty-nine county area.”<sup>9</sup> If Forest tracts are sold to the highest bidder, I surmise the Forest Service’s planners would feel the same way about habitat loss on these newly-acquired private lands. Nonetheless, the Forest Service has not explained how it proposes to potentially sell over 21,000 acres of Mark Twain National Forest without impacting these species, nor has it reported any intent to even initiate Section 7 consultation with the U.S. Fish & Wildlife Service to ensure that this ill-conceived plan will not jeopardize the continued existence of protected species.

- The identified tracts may not be the “crown jewels” of the forest system in Undersecretary Rey’s mind,<sup>10</sup> but they may well be important for environmental reasons as well as recreational enjoyment. Section 303(d) of the Federal Water Pollution Control Act requires each state to identify and rank waters that are not meeting water quality standards. (33 USC 1251 *et seq*). In addition to providing habitat for endangered species, some of the tracts identified in Missouri are very close to 303(d) listed waters. Tablerock Lake is a 303(d) listed water, as is the Gasconade River. 1440 acres of the Forest have been designated for sale that abut or are

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<sup>6</sup>FEIS 3-134.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>FEIS 3-135.

<sup>10</sup>Undersecretary Mark Rey, reported in the Columbia Daily Tribune, Feb.12, 2006.

immediately adjacent to Tablerock Lake.<sup>11</sup> 280 acres that abut or are immediately adjacent to the Gasconade River have also been marked for sale.<sup>12</sup> Indian Creek is a 303(d) listed water near Viburnum and Czar on the Iron County/Crawford County line. 600 acres are marked for sale within 1 mile of the creek.<sup>13</sup> Development projects or timber projects in these locations may have a significant impact on these waters that the Forest Service has not taken into account.

- The Forest Service cannot guarantee that this is a one-time occurrence. Undersecretary Rey was asked whether the Forest Service would stop selling land once \$800 million in funding was reached. He said, “Yes, we would.”<sup>14</sup> Is Mr. Rey authorized to make this promise? What is to prevent this from happening in the future? As Congress concluded in the Secure Rural Schools Act findings, timber sales have fallen “precipitously” in recent years<sup>15</sup> and may well continue to do so in the future. Are our growing education funding needs to be addressed through future forest sales, assuring the continuing decline of our forest resources? Selling forest lands now to offset declining timber sales sets a dangerous and unsustainable precedent for the Forest and the American people.
- If Congress begins the “fire sale” of our national interest lands and assets to compensate for budget shortfalls now, it will only be the beginning of unprincipled liquidation. Budget deficits are real and there are no signs that this Administration will cure them anytime soon. After Congress sells the National Forests, what’s next? National monuments? Parks? Locks and dams? Congress has continually failed to fully fund payments in lieu of taxes and dependent local communities have suffered. The solution is to find the funds, not further erode the PILT base by reducing it through a “clearance” sale.

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<sup>11</sup>22N/23W, 22N/24W, 23N/24W, according to the Forest Service’s Geocommunicator.

<sup>12</sup>37N/10W, near Jerome in Phelps County, according to the Forest Service’s Geocommunicator.

<sup>13</sup>35N/2W, 36N/2W, according to the Forest Service’s Geocommunicator.

<sup>14</sup>Forest Service media briefing, Feb. 28, 2006.

<sup>15</sup>*Secure Rural Schools and Community Self-Determination Act of 2000*. (PL 106-393, 114 Stat. 1607). (Section (a), findings (8) and (9)).

- Undersecretary Rey has said that there is a precedent for a national forest sale of this magnitude that funds other programs, and cited the 1998 Southern Nevada Land Management Act, the 2000 Education Land Grant Act, and the “2005 authority for the Forest Service to convey extra administrative sites.”<sup>16</sup> The Southern Nevada Land Management Act (P.L. 105-263) generates land sales primarily to fund environmental and anti-pollution projects in Nevada. Funds generated by the sales are earmarked only for Nevada projects. This is nothing like the proposed bill, which would sell Missouri forests to fund Mississippi schools. The Education Land Grant Act (P.L. 106-577) authorizes the Secretary of Agriculture to convey small parcels of land to schools districts. Both acts are relatively small in scope. Neither can be accurately described as a large-scale proposal to sell forest lands to provide funding for schools.
- The Forest Service has provided no evidence that the tracts identified for sale are “not subject to efficient or effective management and administration.”<sup>17</sup> Even if some of the tracts cause the Forest Service administrative difficulties, they are still forest lands and may well be capable of providing value - like the enjoyment of a walk in the woods. Disposition of forest lands should not be decided based on how convenient their management is to the Forest Service.
- Identification of designated parcels is a moving target. The Forest Service’s website advises that one may view a PDF files map of the parcels by clicking a Forest Service link, [PDF Maps of USFS Parcels Potentially Eligible for Sale](#). As recently as March 22 (8 days before the public comment period ends), no PDF map was available for Mark Twain. The viewer is advised that some PDF’s are missing because the “maps are being corrected and will be posted as they are available.” Use of the other Forest Service tool, “Geocommunicator” is accompanied by the disclaimer that “discrepancy between the data sets may occur.” In addition to providing suspect information, “Geocommunicator” is unwieldy and difficult to use. Identification of parcel sites must be made more accessible to the public.

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<sup>16</sup>Forest Service media briefing, Feb. 28, 2006.

<sup>17</sup>Section 5 of the Administration’s “National Forest Land Conveyance for Rural Communities Act” bill proposes to require the Secretary of Agriculture to identify tracts that are “not subject to efficient or effective management and administration.”

Please do not hesitate to request further information. Thank you.